90-774

Supreme Court, U.S.
FILED
NOV 13 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

DAN M. LINKOUS,

Petitioner

versus

THOMAS J. STOVALL, ET. AL.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Dan M. Linkous
PRO SE
1526 Kingwood Drive
Kingwood, Texas 77339
(713) 358-6838

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-2928

U.S. COURT OF APPEALS
FILED
JUN 5 1990
GILBERT E. GANUCHEAU
CLERK

DAN M. LINKOUS,
Plaintiff-Appellant,

versus

HONORABLE THOMAS J. STOVALL,
ET. AL.,
Defendants-Appellees,

versus

JAMES M. MURPHY, Attorney
Appellant

Appeal from the United States District Court
for the Southern District of Texas

O R D E R:

IT IS ORDERED that appellants' motions for extension of time within which to file their briefs are DENIED.

IT IS FURTHER ORDERED that the motion of appellant, Dr. Dan M. Linkous, for an order directing the Clerk of the District Court to Transmit the entire file to this Court is DENIED.

J. SMITH 6-5-90 /s/
UNITED STATES CIRCUIT JUDGE

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-2928

U.S. COURT OF APPEALS
FILED
JUL 5 1990
GILBERT E. GANUCHEAU
CLERK

DAN M. LINKOUS,

Plaintiff-Appellant,

versus

HONORABLE THOMAS J. STOVALL,
ET. AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas

Before WILLIAMS, HIGGINBOTHAM, and SMITH,
Circuit Judges:

BY THE COURT:

IT IS ORDERED that the motion of appellant (Dan M. Linkous) for reconsideration of the Court's order of June 5, 1990 is DENIED.

J.S. 6-25-90 / J.S.W. 6-26-90 / PSK 7-1-90

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-2928

U.S. COURT OF APPEALS
FILED
JUL 9 1990
GILBERT E. GANUCHEAU
CLERK

DAN M. LINKOUS,

Plaintiff-Appellant,

versus

HONORABLE THOMAS J. STOVALL,
ET. AL.,

Defendants-Appellees,

versus

JAMES M. MURPHY, Attorney

Appellant

Appeals from the United States District Court
for the Southern District of Texas

CLERK'S OFFICE:

Pursuant to Local Rule 42.3, the appeal was duly entered dismissed for want of prosecution for failure of appellant to file a brief within the time fixed by the rules, this 9th day of July, 1990.

GILBERT F. GANUCHEAU
Clerk of the United States Court
of Appeals for the Fifth Circuit

BY: H. E. Adams, Jr. /s/
Deputy Clerk

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-2928

U.S. COURT OF APPEALS
FILED
OCT 24 1989
GILBERT E. GANUCHEAU
CLERK

DAN M. LINKOUS,

Plaintiff-Appellant,

versus

HONORABLE THOMAS J. STOVALL,
ET. AL.,

Defendants-Appellees,

versus

JAMES M. MURPHY, Attorney

Appellant

Appeal from the United States District Court
for the Southern District of Texas

Before WILLIAMS, HIGGINBOTHAM, and SMITH,
Circuit Judges:

BY THE COURT:

IT IS ORDERED that the motion of appellee, Nancy Linkous, to dismiss the referenced appeal is DENIED. A motion made pursuant to Fed. R. Civ. P. 59(e) suspends the running of the time for filing notice of appeal, and hence renders premature a notice of appeal filed before a ruling

on the motion, but only if the motion is served within ten days of the entry of judgment. Harcon Barge Co. v. D&G Boat Rentals, Inc., 784 F.2d. 665 (5th Circ.) (en banc), cert. denied, 479 U.S. 930 (1986). Here, the judgment was entered on July 19, 1989. Hence, the plaintiff had until July 29 to serve a notice of appeal, but as July 29 was a Saturday, the deadline was July 31.

The record reflects that plaintiff's rule 59(e) motion for reconsideration was filed on August 1, but the record does not reflect when the same was served. Absent a showing that a motion was served timely so as to render plaintiff's notice of appeal premature, we deem the notice of appeal to be effective (since it was filed within thirty days from the date of judgment). We note, as well, that the motions for sanctions appear to have been served more than ten days after judgment and hence cannot affect the appealability of the judgment.

Our denial of the motion to dismiss the appeal is without prejudice to its renewal by any appellee upon a showing that the rule 59(e) motion was in fact served within ten days of judgment so as to render the notice of appeal premature. So ordered.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
JUL 18 1989
JESSE E. CLARK, CLERK
BY DEPUTY /s/

DAN M. LINKOUS,	§	
	§	
VS.	§	
	§	
DONN C FULLENWEIDER	§	
DON FOGO,	§	CIVIL ACTION NO. H-85-3676
NANCY L. LINKOUS, and	§	
THOMAS HENDERSON	§	
	§	

FINAL JUDGMENT

Pursuant to the Memorandum and Order signed on this day, severing and administratively closing Plaintiff's suit against Defendant Don Fogo and granting Defendants Thomas Henderson's, Donn Fullenweider's, and Nancy Linkous' motions for summary judgment, the Court

ORDERS that final judgment shall be entered for Defendants Henderson, Fullenweider, and Nancy Linkous and against Plaintiff.

DONE in Houston, Texas, this 18th day of July, 1989.

/s/
JAMES DeANDA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
JUL 19 1989
JESSE E. CLARK, CLERK
BY DEPUTY /s/

DAN M. LINKOUS,	§	
	§	
VS.	§	
	§	
	§	
DONN C FULLENWEIDER	§	
DON FOGO,	§	
NANCY L. LINKOUS, and	§	CIVIL ACTION NO. H-85-3676
THOMAS HENDERSON	§	
	§	

MEMORANDUM AND ORDER

Pending before the Court are Thomas Henderson's (Henderson's), Donn C. Fullenweider's (Fullenweider's) and Nancy Linkous' motions to dismiss Plaintiff's second amended complaint, or, in the alternative, for summary judgment. Also pending are Plaintiff's objections to the Magistrate's orders entered March 6, 1989, March 22, 1989, and June 15, 1989 and various motions regarding discovery disputes.

Plaintiff's remaining objections to the Magistrate's orders are also denied. The Magistrate had wide discretion to assure orderly discovery and his orders were not clearly erroneous. Accordingly, it is hereby,

ORDERED that Plaintiff's objections to the Magistrate's orders entered March 6, 1989, March 22, 1989, and June 15, 1989 are DENIED. It is further

ORDERED that instrument numbers 151, 153, and 164 are STRICKEN. Because Defendant Don Fogo is in bankruptcy, it is

ORDERED that Plaintiff's action against that Defendant is both SEVERED and ADMINISTRATIVELY CLOSED. It is further

ORDERED that Defendants Henderson's, Fullenweider's, and Nancy Linkous' motions for summary judgment are GRANTED. It is further

ORDERED that the discovery motions listed in footnote 2 above are MOOT.

Accordingly, this case is closed.

DONE in Houston, Texas, this 18th day of July, 1989.

/s/
JAMES DeANDA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
OCT 16 1987
JESSE E. CLARK, CLERK
BY DEPUTY /s/

DAN M. LINKOUS,	§	
Plaintiff	§	
	§	
VS.	§	
	§	
HONORABLE CHARLES	§	
DEAN HUCKABEE,	§	
JUDGE OF THE 247TH	§	
JUDICIAL DISTRICT	§	CIVIL ACTION NO. H-85-3676
COURT OF HARRIS	§	
COUNTY, TEXAS;	§	
HONORABLE ARTHUR C.	§	
LESHER, JUDGE;	§	
DONN C FULLENWEIDER	§	
DON FOGO;	§	
MURIEL FLAKE; and	§	
NANCY LINKOUS,	§	
Defendants	§	

MEMORANDUM AND ORDER

Pending before the Court are Defendant's Rule 12 motions to dismiss, Plaintiff's Rule 15(a) motion for leave to file second amended complaint, and Defendant Fullenweider's Rule 11 motion for sanctions

This case arose out of a divorce action between Plaintiff and his wife, Nancy Linkous, in the 247th Judicial District Court of Harris County, Texas. Donn C. Fullenweider was Nancy Linkous' attorney in state court. State District Court Judge Huckabee presided over the divorce case. In

November of 1983, when custody was at issue, presiding Judge Huckabee appointed Don Fogo to act as attorney ad litem for the Linkous children. In December of 1983, the Court appointed Muriel Flake, a non-clinical psychologist, to report . . .

. . . conduct to date. Plaintiff has consumed considerable judicial resources to rule on multiple frivolous and bad faith claims. This litigation is now narrowed to one issue and limited to a small number of defendants. Plaintiff is cautioned that continued abuse of judicial resources will only result in an increase in the amount of sanctions that will be ordered.

DONE in Houston, Texas, this 16th day of October, 1987.

/s/
JAMES DeANDA
UNITED STATES DISTRICT COURT

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

DAN M. LINKOUS,	§	**ENTERED**
Plaintiff	§	**AUG 18, 1989**
	§	**JESSE E. CLARK, CLERK**
VS.	§	**BY DEPUTY /s/**
	§	
HONORABLE CHARLES	§	
DEAN HUCKABEE,	§	
ET. AL.	§	CIVIL ACTION NO. H-85-3676

NOTICE OF APPEAL

Plaintiff, Dan M. Linkous, hereby gives notice of appeal of an order/orders from Judge James DeAnda of the U. S. District Court to the Fifth Circuit Court of Appeals of the United States. Plaintiff Linkous notices the district clerk of the U. S. District Court for the Southern District of Texas, Houston Division, to follow the Federal Rules of Appellate Procedure in regards to this notice of appeal of the above-captioned case H85-3676. Enclosed are the two orders as Exhibit "A" and "B" to be appealed.

This case was filed 6/26/85 as a 1983 civil rights suit which later added RICO acts and proceeded with appropriate amendments. This presiding court's Judge DeAnda severed out the 1983 civil rights suit and any charges and violations against judges for various reasons (Exhibit "A") and allowed only pursuance of the RICO actions of the

limited defendants. No appeal could be effected on the dismissal of the 1983 civil rights suit or the prosecution of the judges named as this would have been interlocutory and couldn't really be addressed until the entire case was ruled on. The discovery in this case has been obstructed and misrepresentations of the networking conspiracy has resulted in dismissal of the entire case, including the RICO claims. Plaintiff's attorney had, for various reasons, abandoned the case about two weeks before the final order of dismissal (Exhibit "B"). Plaintiff's attorney refuses to return Plaintiff his records in this and other cases he is attorney of record and refused communication the Plaintiff for nearly six weeks concerning this case or the other cases he is responsible for as a means of furtherance of the legal and judicial networking conspiracy to hide the facts of this case (and other related cases) to assure its ultimate demise and the riddance of a very sophisticated, intricately involved, and covert plot by racketeering influential legal and judicial figures who otherwise would be revealed as criminal conspirators. This activity by the extensive network is self-serving and done as a means of "cover up" of blatant illegalities by the very individuals this country entrusts its faith in obeying the law, assuring justice is served, and whom sanctioned with immunity violate not only their obligations and responsibilities to the electing populace and served constituents of this country but make mockery of the founding fathers' efforts to maintain a just, honest, and

proud judicial process for redressing average citizens wrongs perpetrated upon them. A complete record has been intentionally obstructed, denied Plaintiff, and refused development for fear of unraveling the schemes and plots by these numerous assistants of the "system" in this "cover up."

The case's final demise in this court was signed allegedly July 18, 1989, by Judge DeAnda and entered July 19, 1989, by the U. S. District Court Clerk's stamp on the "Final Judgment" (Exhibit B). Plaintiff, unable to get his counsel to communicate with him after weeks of daily phone calls and numerous mailgrams (and the legal and judicial system wonders why so many ardent litigants pursue their cases pro se) filed abandonment notice and dismissal of attorney for Plaintiff with notification of Plaintiff Linkous' intention to proceed pro se in order to preserve and protect his meritorious and just case for reconsideration and possibly ultimate appeal to the higher courts in hopes of receiving fair and just consideration there in the name of all that's fair, just, honest, and "right." This was filed August 1, 1989 . . .

Plaintiff wishes to take no chances with having his appeal forfeited by failure to file within 30 days his "notice of appeal" with technicalities precluding justice again . . .

. . . be filed by Plaintiff timely according to F.R.A.P. so his case may get "airing" at the higher court level with hopefully fair and unbiased (unexparted) consideration. . .

. . . The court and Plaintiff's past attorney in this case act in concert to deny Plaintiff a chance for appellate review of this most important and revealing case. The enterprise enlarges and the conspirators are rapidly recruited to "bury" this cases' facts and issues. Why so much fear over a fair hearing of this case? . . .

The major reason courts want attorneys to represent litigants is not for efficiency, competency, and orderliness of the judicial process but because they can "control" all attorneys (even to "deep six" their clients as advocates) to do what the power structure wants to generate fees and money for the legal-judicial monolithic "machine." Premeditated brain storming and think tanking by the "players" of the conspiracy has prostituted the American judicial process to the point that nearly every citizen is a cynic about it and has little or no respect for it. The system of justice empowers judges to be accountable to their country people who empower them, not to allow wholesale destruction, control, and corruption for the large law firms, financially secure and influential attorneys and businesses, and disregard for the average citizens' rights promulgated by our sacred U.S. constitution. This case deserves to be heard after appropriate discovery by honest, concerned, and conscionable citizens and/or judiciary. The money, time, effort, and belief in this case for five years should not be abused by cavalier dismissals of appeal, intimidation, threat, chill, denial of liberty and pursuit of happiness, abridgement of

one's access to the courts and numerous other tactics and unequal applications and enforcements, double standards, denial of community association, restraint of trade, and destruction/harm to the family are all the tools of the trade used here in this case culminating in this dismissal decision. . . .

. . . refused revelation by this premature, premeditated, arrogant, and disrespectful dismissal of this lawsuit. Plaintiff denied an appeal of his farcical divorce trial and decree, denied access to the state courts for several lawsuits and continued retention of Chapter 7 Bankruptcy for over five years to Plaintiff's detriment, along with personal and family and medical professional destruction is continuing its rationale in this federal court; similar treatment of U. S. District Court appeals or suits by Plaintiff indicates power-broking at its best. . . .

. . . Who is charged with the responsibility to say "enough?" Is it really one big money, power, ego, influence game with no concern for our tradition of justice and moral fiber? Is it the one who ends up with the most toys who really wins in the end? I don't believe so and like Diogenes looking for the honest man, I am continuing to believe in and use as created the system of justice, which becomes tainted by some of its "players" (but hopefully won't destroy us all) to redress the crimes committed against me, my

family, my property, my constitutional rights, and my belief in the larger purpose of life than this worldly display typified in this case.

Respectfully submitted,

/s/

Dan M. Linkous-Plaintiff
1526 Kingwood Drive
Medical Clinic-Market Square
Kingwood, Texas 77339
713/358-6838
Unwillingly pro se -
Abandoned by attorney
Downtrodden

APPENDIX I

Supreme Court of the United States

No. A-273

Dan M. Linkous,

Petitioner

v.

Thomas J. Stovall, et al.

ORDER

UPON consideration of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including November 13, 1990.

/s/ Byron R. White
Associate Justice of the Supreme Court of the United States

Dated this 10th day of October, 1990

APPENDIX J

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

May 31, 1990

Mr. Dan M. Linkous
1526 Kingwood Drive
Kingwood, TX 77339

No. 89-2928 Danny M. Linkous v.
Hon. Thomas J. Stovall

Dear Sir:

Receipt is acknowledged of your letter dated May 18, 1990 in regards to corrections to the transcript, etc. This is to advise that we have marked our docket to show that same will be sent to the administrative panel and screening judge of this Court for further consideration.

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By: /s/
Rosalie C. Varino
Case Manager

RCV:lmc

APPENDIX K

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

April 13, 1990

Mr. Dan M. Linkous
1526 Kingwood Drive
Kingwood, TX 77339

No. 89-2928 LINKOUS -vs- STOVALL ET. AL. -vs- MURPHY

Briefing Notice. Pursuant to FRAP 12 you are hereby notified that the record on appeal has been filed. The brief for appellant and record excerpts are not due within forty (40) days from this date. Enclosed is a checklist of rule requirements for preparation and filing of briefs and record excerpts.

Policy on Extensions. . . . where extensions are requested they are . . . given . . . only for good cause. . . . Failure to have access to the record will not be considered rounds for extending the time. Whether opposing counsel does not object has no bearing on our determination to grant an extension. . . .

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By: /s/
Deputy Clerk

P.S. The record on appeal is being retained in the District Court. Partial Record on appeal has been filed on this date.

APPENDIX L

5/12/90

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAN M. LINKOUS,	§	U.S.D.C. Case No. 85-3676
Plaintiff	§	
	§	ON APPEAL AS
VS.	§	
	§	CASE NO. 89-2898
THOMAS STOVALL,	§	(FIFTH CIRCUIT)
ET. AL.,	§	
Defendants	§	

Plaintiff and Appellant Linkous' Request of the Clerk of this U.S. District Court to Transmit Record . . . to the 5th Circuit Court of Appeals of Case 85-3676 on Appeal as Case 89-2898

To the U. S. District Court Clerk and Court Presiding:

COMES NOW, DAN M. LINKOUS, Plaintiff and Appellant in the above-captioned matter and requests . . . transmit the transcript . . . to the Fifth Circuit Court of Appeals for its consideration on the appeal of this matter by the court . . . and also for its transmission to Plaintiff Linkous to utilize in the preparation and submission of Appellant's brief.

. . . Plaintiff timely paid the appeal fee, designated the record, requested transmission of the . . . file by the U. S. District Court to the Fifth Circuit Court of Appeals, . . .

. . . Plaintiff requests that the Clerk of this U. S. District Court inform him as soon as practicable if there is some problem or reason for delay in this matter;. . .

Respectfully submitted,

/s/

Dan M. Linkous
Plaintiff and Appellant
pro se, unwillingly
1526 Kingwood Drive
Medical Clinic-Market Square
Kingwood, Texas 77339
713/358-6838

APPENDIX M

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

May 23, 1990

To: Dan M. Linkous

No. 89-2928 - Linkous v. Stovall
(DC No. CA-H-85-3676)

In regards to the case identified above, the following motion has been filed:

MOTION OF APPELLANT, DAN M. LINKOUS, FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

This motion will be presented for ruling without oral argument on this date:

MAY 30, 1990

. . . The date shown above indicates when the matter will be forwarded for ruling and does not mean that any action will be completed by then. . .

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By: /s/
Deputy Clerk

APPENDIX N

6/1/90

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DAN M. LINKOUS, Plaintiff-Appellant	§	
	§	Case No. 89-2928
vs.	§	
THOMAS J. STOVALL, ET. AL., Defendant-Appellee	§	

PLAINTIFF AND APPELLANT LINKOUS' RESPONSE TO ATTORNEY OLD'S "OBJECTION" TO APPELLANT LINKOUS' REQUEST FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF"

COMES NOW, DAN M. LINKOUS . . .

I.

Judge James DeAnda entered an order 03-22-90, which was post judgement," after the "Notice of Appeal" had been filed and perfected by Plaintiff and Appellant Linkous, rendering his jurisdiction void in this matter. Judge DeAnda continued to entertain motions and rule on them subsequent to this filing of "Notice of Appeal" by Plaintiff and Appellant Linkous. . . so that Plaintiff and Appellant Linkous can be essentially denied access to the courts . . . DeAnda . . . in his 05-25-90 entered order, denies attorney Long's motion for reimbursement of expenses and sanctions against Plaintiff . . . denied "Plaintiff's Motion to Show Authority" . . . "the court simply notes that it has ruled on

all pending post judgment motions at the request of the Court of Appeals." . . . Appellant Linkous contends that he has not received nay such order from the Fifth Circuit Court of Appeals conferring this responsibility upon judge DeAnda in this matter. . . .

II.

. . . Fifth Circuit Court of Appeals . . . denied Defendant's request for sanctions and attorney fees as not timely filed from the entry of the "Final Judgment" . . . They misrepresent . . . aspects of this case to essentially "make it easy" for them to dismiss this case at will. . . . This honorable body is too knowledgeable and wise to be unduly influenced by such tactics and maneuvers . . . in matters involving powerful, influence peddling individuals or very wealthy bureaucratic individuals, especially if they are attorneys or some judges, . . . The real crime is the perjurious affidavit by Nancy Linkous and the false statements of her impoverished state resulting in the appointment, at the taxpayers' expense, by Judge Botley and DeAnda, of one of the largest and certainly one of the most powerful law firms in the United States, Andrews-Kurth, to represent her . . . these same powerful, large number of influential attorneys representing these Defendants . . .preclude Appellant Linkous . . . "complete and full" opportunity to review the original file . . . and . . . a sufficient time subsequent to prepare his Appellant's brief . . .

III.

. . . ninety days . . . subsequent to this filing by Appellant Linkous of his "Extension of Time" the Internal Revenue Service came to his office and illegally seized all of the assets and documents in his office of medal and legal and personal nature. . . . after two district court appearances . . . the I.R.S. admitted that they "made a mistake," and returned all of these assets. . . . use of the I.R.S. by these "power-brokers and influence-peddlers" in the legal and judicial community to further harass and obstruct Plaintiff and Appellant Linkous' ability to be able to prepare, fully and completely, adequately have access to the documents, and be able to submit his Appellant's brief so that it could be heard on its merits. . . .

WHEREFORE, . . . Appellant, Dan M. Linkous, prays . . . this court grant "Plaintiff's Request for Extension of Time," . . . allow Plaintiff and Appellant Linkous to have the original file sent to him . . . to fully and adequately prepare to submit his Appellant's brief. . . .

Respectfully submitted,

/s/

Dan M. Linkous
Plaintiff and Appellant
pro se, unwillingly
1526 Kingwood Drive
Medical Clinic-Market Square
Kingwood, Texas 77339
(713) 358-6838

APPENDIX O

6/18/90

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
AT NEW ORLEANS

No. 89-2928

DAN M. LINKOUS,
Plaintiff-Appellant,

v.

HON. THOMAS J. STOVALL, et. al,
Defendants-Appellee.

APPELLANT'S MOTION FOR REHEARING BY THE FULL THREE-JUDGE PANEL, TO REINSTATE THE APPEAL, TO USE THE FULL RECORD FOR PREPARATION OF THE BRIEF AND RECORD EXCERPTS, AND FOR A FULL APPELLANT'S BRIEFING PERIOD PURSUANT TO RULE 31(a), FRAP

DIRECT APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION DISTRICT COURT NUMBER CA-H-85-3676

DAN M. LINKOUS
PLAINTIFF-APPELLANT, pro se
1526 Kingwood Drive
Kingwood, Texas 77339
(713) 358-6838

SUGGESTION TO DISQUALIFY JUDGE JERRY SMITH TO CONSIDER THIS APPEAL UNDER U.S.C. § 455

Appellant is . . . witness for Mr. Bouchard's family . . . in a huge wrongful death law suit against the City of Houston . . . Texas. . . .

Mr. Bouchard died without medical evaluation or attention in the custody of the City of Houston . . . Appellant had been Mr. Bouchard's personal physician . . . At the time of Mr. Bouchard's death, Judge Jerry Smith was City Attorney for the City of Houston and supervised the City's defense of this case for 2-3 years. . . . Judge Smith still has close ties with and interests in this case and . . . close ties and interests with his former law firm—chief sponsor and endorser—Fulbright and Jaworski . . . who represent the key racketeering defendants—Henderson and Sheinfeld, Maley, and Kay, et. al. . . .

Judge Smith's unusually harsh personal individual effective dismissal of this case through his denial of extension of time to file Appellant's Brief . . . personal and professional bias against Appellant . . . interests in favor of the powerful defendants' position in both this case and in the Bouchard case.

Chief Assistant Clerk Windhorst and Case Manager Varino both . . . stated . . . extension of time was "no problem" and "commonplace" in an extensive and expensive

case concerning such extremely complex significant issues such as this case.

. . . Ms. Varino had advised Appellant that he was clearly entitled to another briefing schedule after receipt of the record from the district court.

. . . suggests that Judge Jerry Smith is disqualified from further participation in the appeal of this case under the provisions of 28 U.S.C. §§ 455(a), (b)(5)(iii), and (c).

/s/
Dan M. Linkous, Appellant

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ISSUE: WHETHER THE CLERK OF THE COURT OF APPEALS PREMATURELY ISSUED THE INITIAL APPELLANT'S BRIEFING SCHEDULE PRIOR TO TRANSMISSION OF THE RECORD TO THE COURT OF APPEALS AND/OR WITHOUT PROPERLY AUTHORIZED AND JUSTIFIED EXCEPTIONS TO THE COMPLETION AND TRANSMISSION OF THE FULL RECORD 1

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
AT NEW ORLEANS

No. 89-2928

DAN M. LINKOUS,
Plaintiff-Appellant,

v.

HON. THOMAS J. STOVALL, et. al,
Defendants-Appellee.

APPELLANT'S MOTION FOR REHEARING BY THE FULL THREE-JUDGE PANEL, TO REINSTATE THE APPEAL, TO USE THE FULL RECORD FOR PREPARATION OF THE BRIEF AND RECORD EXCERPTS, AND FOR A FULL APPELLANT'S BRIEFING PERIOD PURSUANT TO RULE 31(a), FRAP

SUMMARY OF THE ARGUMENT

After the notice of appeal was filed on about 18 August 1989 and docketed, district court failed and refused for about ten (10) months to compile and transmit the record of the case to the court of appeals as required by Rule 11, FRAP. During this period of extensive exparte and deceptive maneuvering and probing, on about 13 April 1990, the clerk of the court of appeals, in violation of Rules 11 and

12, FRAP, improperly issued an unauthorized premature appellant's briefing schedule before the record was transmitted to or filed in the court of appeals.

Mr. Windhorst and Ms. Varino have admitted to appellant that the briefing schedule was improperly issued, but suggested appellant was required to seek and extension of time to file his appellant's brief in order to preserve his appeal. Judge Jerry Smith, in a single judge order, denied an extension of time and effectively terminated appellant's appeal while the district court was still carrying on obstructive post judgment motion commotion and withholding the case file from appellant in his district court chambers.

Appellant now believes, based on recent communications with Mr. Windhorst, Ms. Varino, and Ms. Davenport that the record is now released by Judge DeAnda for compilation and transmission to the court of appeals. When the complete record is received by the Court of Appeals, a new briefing schedule should be issued and the record should be forwarded to appellant for use in preparing his brief.

ARGUMENT

"The steps in the assembly, transmission, and filing of the record are governed by Rules 10, 11, and 12." 9 Moore's Federal Practice, § 210.03, p. 10-11(3/80).

Rule 10(a), FRAP, defines the composition of the record on appeal as follows:

> The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certi-

> fied copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

Appellant has repeatedly urged that the entire case file be included in the record on appeal.

Rule 10(b), FRAP, prescribes the duty of appellant to order the transcript of hearings form the court reporters. IN spite of repeated intentional crucial alterations to omissions in and obstructions to the completion of appellant's transcript orders, the final transcript correction was provided to and filed in the court of appeals on about 31 May 1990. (Exhibit "A"). The district court and the official court reporter have repeatedly ignored directives and pleas of the court of appeals to advise of the status and to provide transcripts to complete the appellate record.

In addition to these delays in completion of the transcripts, the district court and its clerk repeatedly obstructed and delayed completion of the record while they orchestrated a symphony of harassing tardy frivolous post judgment motions by the powerful defendants and their unprincipled mercenaries. The district court appears to have finally stopped its interference and obstruction of completion of the record by its order entered 25 May 1990, only eleven (11) days before entry of Judge Smith's order denying extension of time to obtain access to the record and to prepare and file appellant's brief.

In accordance with the foregoing, it appears that the district court record for this appeal was finally complete,

but still retained, without formal authority, by the clerk of the district court, on 25 May 1990, the date of entry of Judge DeAnda's final post judgment order. Appellant believes that the entire original case file, unbound and not consecutively page numbered, was held by the district court and clerk until at least 12 June 1990 when Appellant discussed this matter with deputy clerk Joan Davenport and Case Manger Rosalie Varino. Fifth Circuit Local Rule 10.2 prescribes the form of the record to be bound and pages numbered consecutively by the clerk of the district court before transmission to the court of appeals.

Rule 11(a), FRAP, prescribes the duties of Appellant for transmission of the record to the court of appeals. As outlined hereinabove, Appellant has diligently and fully complied with, in spite of onerous interferences and obstructions, his duties "to enable the clerk to assemble and transmit the record." Appellant had repeatedly urged that the record include the entire case file.

Even the intimidated, manipulated court reporter has finally minimally completed her duties to redo and complete the transcripts pursuant to Rule 11(b), FRAP.

Now that the transcripts are complete, only the clerks of the district court and/or of the court of appeals are errant prescribed administrative duties under Rules 11 and 12, FRAP.

The clerk of the district court has never prepared and transmitted the record to the clerk of the court of appeals

as required by Rule 11(b). These derelictions are also direct violations of Fifth Circuit Rules 11.1 and 11.2 which appear to attempt to restate and amplify the duties of the district judge, his court reporter, and his clerk in these specific circumstances.

The exceptions, provided by the FRAP, to the clerk of the district court's duty to transmit the record to the court of appeals have not been properly invoked.

1) Rule 11(c) requires stipulations by the parties or motion of any party and order by the district court for retention of the record for use by the parties in preparing appellate papers. No due process stipulation, motion, nor order has been filed to authorize the clerk of the district court to so certify to the court of appeals. In fact, the district court has been withholding the case file in his office to prohibit access by appellant and by the deputy district clerks of the district court file room.

2) No order of the court of appeals to transmit a certified copy of the docket entries in lieu of entire record has been filed or provided to Appellant pursuant to Rule 11(e).

3) No due process order of the district court for retention of the record "for use there pending the appeal" has been filed or noticed to appellant. No such order has been transmitted to the court of appeals nor to appellant as required by Rule 11(e).

> When an appeal is taken from a final judgment that disposes of the entire action below, the record is no longer needed in the district court and there is no in-

convenience attendant upon its transmission as the record of appeal. 9 Moore's Federal Practice, § 211.12[2], p.11-40(3/80).

4) No written stipulation of the parties to retain any parts of the record in the district court has been executed or filed as required by Rule 11(f).

5) Appellant has repeatedly requested to the clerks of the district and appeals courts that the entire record be transmitted for use by appellant for all motion and briefing requirements. These requests forego any contrary exceptions that could be implied from Rule 11(g).

Accordingly, until the entire record is page numbered consecutively, transmitted to the court of appeals to preclude further obstruction, interferences, and alteration and made available to appellant for orderly auditing, referencing, and copying; appellant is unreasonably prevented and obstructed from any semblance of equal, fair, meaningful briefing and record excepting.

Rule 12, FRAP, sets forth the duties of the clerk of the court of appeals to properly establish the briefing schedule.

Rule 12(b) establishes the next check-point in the briefing schedule sequence. Since the record has never been transmitted pursuant to Rule 11, the clerk of the court of appeals has never been authorized under the rules to file the record and initiate appellant's briefing schedule pursuant to Rule 31, FRAP.

Here is the crucial error in these proceedings—the execution of the unauthorized premature briefing schedule

notice (Exhibit "B") [seemingly invited and then issued under very questionable circumstances by the clerk of the court of appeals (Exhibit "C")] before the record or any legitimate orders excepting transmission of the entire record were filed with the court of appeals. Also see the vague, cryptic related transmittals by deputy clerk Joan Davenport (Exhibits "D" and "E") which are not authorized by any court order, as required by Rule 11. It is grossly unjust and unconscionable to effectively dismiss appellant's entire appeal due to the clerk's intentional and/or negligent maladministration and dereliction or clearly prescribed and routinely applied rules, duties, customs, and practices of the court of appeals and its clerk.

> Rule 11, as amended in 1979, imposes no duty on the appellant to see that the record is transmitted within any fixed time and eliminates all motions for extension of time for transmission. The transmission of the record under the amended rule is the clerk's work and dereliction in prompt transmission purely a matter of judicial administration. 9 Moore's Federal Practice § 211.05, p.11-18(3/80).

The crucial intentional or negligent error in this appeal is the clerk of the court of appeals' fraudulent notice of receipt of and filing "of the record transmitted pursuant to Rule 11(b), or the partial record transmitted pursuant to Rule 11(e), (f), or (g), or the clerk's certificate under Rule 11(c)" and thereby the triggering of appellant's briefing schedule under Rule 31(a), FRAP. No such prescribed record, partial record, nor certificate had yet been transmitted to nor received by the clerk of the court of appeals

and therefore the predicate requirements for start of the appellant's briefing schedule have never been met.

To deprive appellant of his right to appeal this extremely controversial case under the foregoing circumstances of total laxity and probably malice by the clerks of the district and appeals courts in light of these courts' general policy, practice, and custom to grant liberal extensions of time to prepare and file appellate briefs is an extremely harsh and unreasonable prejudice and bias against appellant.

> The want of published decisions on the subject suggests that extensions of time requested before the time has run are granted with a much more generous hand; and occasional observations in the decisions verify this suggestion. F.N. 11: See. e.g., Business Forms Finishing Service, Inc. v. Carson, 463 F.2d. 966 (7th Circ. 1971). in which the appeal was dismissed for failure to file a brief within the eleventh extension of time, perhaps an unusual example of tolerance. 9 Moore's Federal Practice, § 226.02[2], p.26-7(3/80).

It is, accordingly, the duty of the court of appeals to compel the clerk of the district court to prepare and transmit the entire record to the court of appeals so that the normal briefing procedure can be followed.

CONCLUSION

Appellant requests

1) That the Court reinstate the appeal of this cause in all respects;

2) That the clerk of the court of appeals be required to obtain and file the entire district court case file and record, including all transcripts and exhibits;

3) That upon determining that the entire record has been transmitted to and filed in the court of appeals, a new briefing be issued to appellant by the clerk of the court of appeals; and

4) That upon initiation of appellant's briefing schedule the entire record be shipped to appellant for copying and use in preparing the brief and the record excerpts.

Respectfully submitted,

/s/
Dan M. Linkous
Plaintiff-Appellant, pro se
1526 Kingwood Drive
Medical Clinic-Market Square
Kingwood, Texas 77339
713/358-6838

APPENDIX P

1st Letter

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

January 29, 1990

Mr. Gilbert F. Ganucheau, Clerk

In re: CA-H-85-3676
DAN M. LINKOUS vs DONN C. FULLENWEIDER, ET AL.

(COURT OF APPEALS #89-2928)

Dear Sir:

This is your notification pursuant to local rule 11.2 advising the Clerk of your Court for the reason for delay in the above mentioned appeal.

We request an extension of fifteen (15) days to resolve the deficiency and transmit the record.

XXX Motion(s) pending.

CC: June Canulla

Very truly yours,

Jesse E. Clark
Clerk

By: /s/
Deputy Clerk

APPENDIX Q

2nd Letter

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

February 23, 1990

Mr. Gilbert F. Ganucheau, Clerk

In re: CA-H-85-3676
DAN M. LINKOUS vs DONN C. FULLENWEIDER, ET AL.

(COURT OF APPEALS #89-2928)

Dear Sir:

This is your notification pursuant to local rule 11.2 advising the Clerk of your Court for the reason for delay in the above mentioned appeal.

We request an extension of fifteen (15) days to resolve the deficiency and transmit the record.

XXX Motion(s) pending.

CC: June Canulla

Very truly yours,

Jesse E. Clark
Clerk

By: /s/
Deputy Clerk

APPENDIX R

THIRD LETTER

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

OFFICE OF THE CLERK

March 19, 1990

Mr. Gilbert F. Ganucheau, Clerk

In re: CCA 89-2928
CA-H-85-3676
DAN M. LINKOUS vs DONN C. FULLENWEIDER, ET. AL.

Dear Sir:

This is your notification pursuant to local rule 11.2 advising the Clerk of your Court for the reason for delay in the above mentioned appeal.

We request an extension of fifteen (15) days to resolve the deficiency and transmit the record.

XXX Motion(s) pending.

CC: June Canulla

Very truly yours,

Jesse E. Clark
Clerk

By: /s/
Deputy Clerk

APPENDIX S

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

March 27, 1990

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
MAR 29 1990
JESSE E. CLARK, CLERK

Mr. Jesse E. Clark, Clerk
United States District Court
515 Rusk Avenue, Room 5300
Houston, TX 77002

No. 89-2928 - Linkous vs. Stovall, et. al.

USDC# CA-H-85-3676

X It would appear from information available to us that the record should be complete for the purposes of this appeal. We would appreciate your now forwarding the record "forthwith," pursuant to FRAP 11. ***(Partial Record)***

Very truly yours,

GILBERT F. GANUCHEAU, CLERK

BY: /s/
Deputy Clerk

APPENDIX T

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

April 6, 1990

Mr. Gilbert F. Ganucheau, Clerk

In re: CCA 89-2928
CA-H-85-3676 LINKOUS vs FULLENWEIDER

Dear Sir:

This is your notification pursuant to local rule 11.2 advising the Clerk of your Court for the reason for delay in the above mentioned appeal.

We request an extension of fifteen (15) days to resolve the deficiency and transmit the record.

X Motion(s) pending.

3-21-90 Motion for Reimbursement of Fees & Expenses for Sanctions against Plaintiff.

X Copy of the docket sheet attached. Previous pending motions ruled on 3-22-90.

cc: Case Manager to Judge DeAnda

Very truly yours,

Jesse E. Clark
Clerk

By: /s/
Deputy Clerk

APPENDIX U

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

April 11, 1990

Mr. Gilbert F. Ganucheau, Clerk

In re: CA-H-85-3676
CCA# 89-2928
LINKOUS vs FULLENWEIDER, ET AL.

Dear Sir:

In connection with this appeal, the following documents are transmitted.

X Other: Partial Record *Per your request*

Very truly yours,

/s/
Deputy Clerk

APPENDIX V

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

April 13, 1990

Mr. Dan M. Linkous
1526 Kingwood Drive
Kingwood, TX 77339

No. 89-2928 LINKOUS -vs- STOVALL ET. AL. -vs- MURPHY

Briefing Notice. Pursuant to FRAP 12 you are hereby notified that the record on appeal has been filed. The brief for appellant and record excerpts are not due within forty (40) days from this date. Enclosed is a checklist of rule requirements for preparation and filing of briefs and record excerpts.

Very truly yours,

GILBERT F. GANUCHEAU,
Clerk

By: /s/
Deputy Clerk

P.S. The record on appeal is being retained in the District Court. Partial Record on appeal has been filed on this date.

APPENDIX W

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

OFFICE OF THE CLERK

April 20, 1990

Mr. Gilbert F. Ganucheau, Clerk

In re: CA-H-85-3676
CCA# 89-2928
LINKOUS vs FULLENWEIDER, ET AL.

Dear Sir:

In connection with this appeal, the following documents are transmitted.

X Other: Partial Record on appeal "per your letter"

Very truly yours,

/s/
Deputy Clerk

APPENDIX X

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

April 30, 1990

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
MAY 3 1990
JESSE E. CLARK, CLERK

Mr. Jesse E. Clark, Clerk
United States District Court
515 Rusk Avenue, Room 5300
Houston, TX 77002

No. 89-2928 - Linkous vs. Stovall, et. al.

USDC# CA-H-85-3676

X It would appear from information available to us that the record should be complete for the purposes of this appeal. We would appreciate your now forwarding the record "forthwith," pursuant to FRAP 11. ***(Partial Record)***

Very truly yours,

GILBERT F. GANUCHEAU, CLERK

BY: /s/
Deputy Clerk

Record cannot go
MTNS pending
RV ntfd - 5-4-90

APPENDIX Y

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

May 21, 1990

Mr. Gilbert F. Ganucheau, Clerk
In re: CCA 89-2928
CA-H-85-3676 LINKOUS vs STOVALL ET AL

Dear Sir:

This is your notification pursuant to local rule 11.2 advising the Clerk of your Court for the reason for delay in the above mentioned appeal.

We request an extension of fifteen (15) days to resolve the deficiency and transmit the record.

X Motion(s) pending.

3-21-90 MOTION FOR REIMBURSEMENT OF FEES (CHARLES E. LONG)

5-16-90 Pltf. & Appellant LINKOUS request of the Clerk of DC to transmit record and to supplement etc.

X Copy of the docket sheet attached. Previous pending motions ruled on 3-22-90.

cc: Case Manager for Judge DeAnda

Very truly yours,

Jesse E. Clark
Clerk

By: /s/
Deputy Clerk

APPENDIX Z

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

May 31, 1990

Mr. Dan M. Linkous
1526 Kingwood Drive
Kingwood, TX 77339

No. 89-2928 Danny M. Linkous v.
Hon. Thomas J. Stovall

Dear Sir:

Receipt is acknowledged of your letter dated May 18, 1990 in regards to corrections to the transcript, etc. This is to advise that we have marked our docket to show that same will be sent to the administrative panel and screening judge of this Court for further consideration.

Very truly yours,

GILBERT F. GANUCHEAU,
Clerk

By: /s/
Rosalie C. Varino
Case Manager

RCV:lmc

APPENDIX AA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

July 2, 1990

Mr. Gilbert F. Ganucheau, Clerk
In re: CA-H-85-3676

DAN LINKOUS vs HONORABLE THOMAS STOVALL, ET AL

(COURT OF APPEALS #89-2928)

Dear Sir:

This is your notification pursuant to local rule 11.2 advising the Clerk of your Court for the reason for delay in the above mentioned appeal.

XXX The record is incomplete in this Court at this time.

Very truly yours,

Jesse E. Clark
Clerk

By: /s/
Deputy Clerk

APPENDIX AB

CASE NO. 85-3676
FILING DATE: 6/28/85
JUDGE NO.: J4116
48201 JAMES DeANDA

STATISTICALLY CLOSED 7-19-89

PLAINTIFFS	DEFENDANTS
Dan M. Linkous	1. ~~Thomas J. Stovall, Judge of the Second Administrative Judicial District~~ Dism 8-10-88
	2. ~~Dean Huckabee, Judge of the 247th Judicial District Court~~ Dism 10-16-87
	3. ~~Arthur C. Lesher, Judge~~ Dism 10-16-87
	4. Donn C. Fullenweider
	5. ~~Don Fogo~~ Stat. Closed 7-19-89
	6. ~~Muriel Flake~~ Dism 7-6-89
	7. Nancy L. Linkous
	8. Thomas Henderson

CAUSE

Right to Due Process of Law in Connection for a State Court Custody Suit 42 U.S.C. 1983 & 29 U.S.C. §§ 2201 & 2202

ATTORNEYS

PLTF
Dan M. Linkous, M.D.
1526 Kingwood Drive
Kingwood, TX 77339
713/358-6838

DEFT #6
Brian M. Chandler
HIRSCH, GLOVER,
ROBINSON & SHEINESS
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Houston, TX 77002
224-8941

DEFT #5
~~Donald Peter Fogo~~
~~1112 South Richey~~
~~Pasadena, TX 77506~~
~~472-1107~~

PLTF (Original Past Attorney)
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(713) 651-7703

~~Robert Saunders~~
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~~Suite 1000~~
~~Houston, TX 77018~~

Atty for Nancy Linkous
William E. Junell, Jr.
ANDREWS AND KURTH
4200 Tx Commerce Tower
Houston, TX 77002

DEFT #4
Warren Taylor
FLOYD, TAYLOR & RILEY
1301 McKinney, #3440
Houston, TX 77010
(713) 655-8414

Charles Long
7100 Tx Commerce Tower
Houston, TX 77002

DATE	NR.	JAMES DeANDA PROCEEDINGS H-85-3676
6-28-85	1	ORIGINAL COMPLAINT, filed.
7-17-85		SUMMONS (7) issued.
8-6-85	9	ANSWER of deft Arthur C. Lesher, Filed.8-12-85
8-8-85	11	Defts, Stovall, Huckabee, and Lesher's MOTION TO DISMISS, filed. 8-14-85
8-8-85	15	Deft Linkous' MOTION TO DISMISS, filed. 8-14-85
8-12-85	16	Deft Fullenweider's MOTION TO DISMISS, filed. 8-14-85
8-16-85	18	Deft Flake's MOTION TO DISMISS, filed8-19-85
8-16-85	20	Deft Donald Peter Fogo's MOTION TO DISMISS, filed. 8-19-85
9-4-85	21	(JDA) ORDER setting PT & Motion conf. Oct. 23, 1985
10-16-85	23	Pltf's RESPONSE to the Motions to Dismiss of Defts 10-18-85
10-23-85	26	(JDA) PRETRIAL/MOTION CONFERENCE ORDER. 10-24-85
11-12-85	27	Pltf AMENDED COMPLAINT, filed. 11-15-85
7/30/86		Rec'd Pltf's SECOND AMENDED COMPLAINT 8-1-86
10-8-86	39	(JDA) ORDER setting conf on all pending matters Conf set Dec. 10, 1986
12-8-86 CELED	46	(JDA) ORDER, filed. Conf for 12-10-86 CAN- RESET for Feb. 25, 1987

(JDA) CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
DAN M. LINKOUS	HON. THOMAS J. STOVALL, ET AL

DATE	NR.	PROCEEDINGS	H-85-3676

2-18-87 48 (JDA) ORDER, filed. Pretrial conf. scheduled for 2-25-87 is CANCELED.

8-10-87 50 Pltf's MOTION FOR LEAVE TO PROCEED WITH DISCOVERY, filed. 8-11-87

10-16-87 52 (JDA) ORDER, filed.
Memorandum and Order. All claims against Defts Kenyon Huckabee and Lesher are DISMISSED. All motions to dismiss all claims contained in Pltf's amended complaint are GRANTED. Pltf granted leave until Nov. 10, 87 to file second amended complaint presenting only RICO cause of action. Court DEFERS ruling on Deft's motion for sanctions. 10-20-87

11-10-87 54 Pltf's SECOND AMENDED COMPLAINT, filed. 11-13-87

12-23-87 55 (JDA) ORDER, filed. Parties named in Pltf's second amended complaint ORDERED to appear for scheduling conf on Feb. 3, 88.

2-3-88 56 (JDA) ORDER, filed. Scheduling Order entered:
PTO Nov. 10, 88
Jury Trial Dec. 12, 88

3-15-88 59 Joint STATUS REPORT, filed. 5-4-88

5-19-88 61 (JDA) ORDER, filed.
Conference on all pending matters set
Motions Jun 15, 88
Responses Jul 5, 88
Conf set Jul 20, 88

6-14-88 64 (JDA) ORDER, filed.
Jul 20, 88 conf RESET for Aug 10, 88, 2:30 PM

(JDA) CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
DAN M. LINKOUS	HON. THOMAS J. STOVALL, ET AL

DATE	NR.	PROCEEDINGS	H-85-3676

6-14-88 Pltf's NOTICE OF INTENTION TO TAKE ORAL DEPOSITIONS

6-21-88 73 Movants . . . MOTION FOR PROTECTIVE ORDER, filed.

6-21-88 74 Deft MOTION TO QUASH DEPOSITIONS

6-22-88 Pltf's NOTICE OF INTENTION TO TAKE ORAL DEPOSITIONS

7-1-88 Pltf's NOTICE OF INTENTION TO TAKE ORAL DEPOSITIONS

7-1-88 117 Movants AMENDED MOTION FOR PROTECTIVE ORDER

7-11-88 120 (JDA) ORDER Case set for conf Aug 10, 88

7-11-88 121 (JDA) ORDER Discovery STAYED until after the Aug 10, 88 conference.

7-14-88 122 Pltf's MOTION FOR SANCTIONS FOR FAILURE TO MAKE OR COOPERATE IN DISCOVERY

7-14-88 123 Pltf's MOTION FOR CONTEMPT AND SANCTIONS

7-14-88 125 Pltf's REQUEST FOR HEARING.

7-28-88 129 Pltf's MOTION TO EXTEND DISCOVERY.

8-2-88 130 (JDA) ORDER Deft counsel's motion to substitute is GRANTED.

8-10-88 131 (JDA) ORDER, Motion to dismiss Deft Stovall is GRANTED.

DATE	NR.	PROCEEDINGS	H-85-3676
8-10-88	133	(JDA) PRETRIAL/MOTION CONF ORDER, . . . Huckabee's mtn for protective order granted. . . . takes under advisement . . . protective orders . . . all depositions will be taken under the supervision of the Honorable Botley.	
8-17-88	134	Pltf's AMENDED MOTION TO EXTEND DISCOVERY.	
8-27-88	138	Transcript of proceedings August 10, 1988 before James DeAnda, filed.	
12-8-88	142	(JDA) ORDER, 12-12-88 Trial is Canceled. discovery . . . and supervision of depositions are referred to Magistrate Botley for disposition prior to 2-15-88.	
1-27-89	143	(CB) MOTION HEARING MINUTES, Motions heard - Judge will confer w/ Judge DeAnda.	
3-2-89	148	(CB) ORDER, Pltf shall within ten(10) days pay the Court Reporter ($5,587.50) for the deposition transcripts.	
3-6-89	149	(CB) MEMORANDUM AND ORDER, Deponents Motion for protective order is GRANTED. Pltf shall deposit in the registry of the court five hundred dollars . . . for each deposition prior to deposing the designated deponent. . . . pretrial order shall be filed on or before April 14, 1989.	
3-16-89	150	Pltf's Objections to Magistrate's Order	
3-22-89	152	(CB) ORDER . . . Joint PT-Order shall be filed no later than May 1, 1989.	
4-4-89	161	Pltf's OBJECTIONS TO MAGISTRATE'S ORDER.	

(JDA) CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
DAN M. LINKOUS	HON. THOMAS J. STOVALL, ET AL

DATE	NR.	PROCEEDINGS	H-85-3676

4-6-89 163 Fullenweider's MOTION FOR PROTECTIVE ORDER.

4-20-89 170 Pltf's REQUEST FOR EXTENSION OF TIME for Adequate Discovery.

4-21-89 171 (CB) ORDER . . . Deft Fullenweider's Motion for Protective Order . . . is GRANTED. . . . . hearing of Apr 20, 1989, will be continued and heard on Jun 5, 1989 . . .

5-12-89 185 Pltf's OBJECTION to the Appointment of Counsel . . . to Deft Nancy Linkous and for Protection with Respect to Financial Affidavit.

5-12-89 Pltf's NOTICE of Oral Deposition.

5-18-89 200 (CB) ORDER . . .

5-22-89 202 (CB) ORDER Appointing Counsel . . . Warren G. King . . . is appointed to represent Deft Nancy Linkous. Court finds that (from the financial affidavit of Nancy Linkous), that she does not possess sufficient finances at present to employ counsel . . .

5-22-89 203 Defts MOTION FOR PROTECTION.

5-31-89 208 (CB) ORDER . . . Court's Order of May 18, 1989, appointing Warren G. King to represent Nancy Linkous is hereby RESCINDED.

5-31-89 209 (CB) ORDER Appointing Counsel . . . Order, that William E. Junell, Jr. of Andrews and Kurth Law Firm, is appointed pursuant to 28 U.S.C. §1915(d) to represent Deft Nancy Linkous.

(JDA) CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
DAN M. LINKOUS	HON. THOMAS J. STOVALL, ET AL

DATE	NR.	PROCEEDINGS	H-85-3676

5-30-89 210 Pltf's MOTION to Extend Discovery and for Trial Continuance.

5-30-89 212 Pltf's MOTION to Compel and for Sanctions

5-30-89 213 Pltf's MOTION for Contempt for Failure to Obey Deposition Subpoena.

6-5-89 218 (CB) MOTION hearing . . . Trial to commence.

6-14-892221 Deft's MOTION for Protective Order.

6-15-89 223 (CB) ORDER . . . Fullenweider's objections to Pltf's Request for Production . . . are SUSTAINED. Such documents are privileged and not discoverable. . . .

6-15-89 224 (CB) ORDER . . . Henderson's Motion for Protection GRANTED . . . Pltf Motion to Extend Discovery and for Trial Continuance DENIED.

6-15-89 225 (CB) ORDER . . . Pltf's Motion for Leave to File Third Amended . . . Complaint . . . DENIED.

6-15-89 227 Deft NOTICE OF ORAL DEPOSITION of Dan M. Linkous.

6-16-89 234 Pltf's Motion for Rule 11 Sanctions against Thomas Godbold and Deft Thomas Henderson.

6-16-89 236 Pltf's Motion for Rule 11 Sanctions against Ms. Barbara Hilburn and Deft. Donn C. Fullenweider.

6-18-89 245 (CB) ORDER . . . Pltf's Motions to Deem Facts Admitted . . . DENIED. . . . Pltf's Motion for Sanctions . . . DENIED.

(JDA) CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
DAN M. LINKOUS	HON. THOMAS J. STOVALL, ET AL

DATE	NR.	PROCEEDINGS	H-85-3676

6-30-89 249 Joint Pre-Trial Order, filed.

7-14-89 256 (JDA) ORDER . . . ORDERED that Jury selection set for July 11, 1989 is CANCELED.

7-19-89 258 (JDA) MEMORANDUM AND ORDER . . . Pltf's objections to Magistrate's orders . . . DENIED. Pltf Fogo's Instrument numbers . . . STRICKEN and ADMINISTRATIVELY CLOSED. Defts . . . motions for summary judgment are GRANTED.

7-19-89 259 (JDA) FINAL JUDGMENT . . . Final judgment entered for Defts Henderson, Fullenweider, and Nancy Linkous and against Pltf. All costs are taxed against Pltf.

8-1-89 260 Pltf's NOTICE OF ABANDONMENT of case by J. Murphy . . . assignment of Pltf D.M. Linkous, as representative pro se in this matter . . .

8-10-89 262 Deft's MOTION FOR THE IMPOSITION OF SANCTIONS upon Pltf. D.M. Linkous & his atty, J.M. Murphy, filed 8-16-89

8-18-89276 Pltf's, Dan Linkous, NOTICE OF APPEAL, dkt'd 9-15-89

9-28-89 280 Plaintiff's Request of this Court to Demand Attorney James Murphy to Immediately Turn Over all Legal Records . . . Involving Plaintiff's Case

9-28-89 Filing and Docketing fees paid $105.00, #333457, reference entry no. 276.

9-29-89 282 Pltf, Dan Linkous, DESIGNATION OF RECORD.

(JDA) CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
DAN M. LINKOUS	HON. THOMAS J. STOVALL, ET AL

DATE	NR.	PROCEEDINGS	H-85-3676

12-6-89 287 (JDA) ORDER . . . Plaintiff's motion seeking a court order requiring James Murphy to return various legal records and work product is DENIED. . . . The Plaintiff's request for the refund of $1,000.00 placed in the registry of the Court is DENIED. . . . Defendants Nancy Linkous, Thomas Henderson's, and Donn Fullenweider's motions for sanctions are GRANTED. . . .

3-21-90 290 Charles E. Long's Motion for Reimbursement of Fees and Expenses and for Sanctions against Plaintiff, filed.

4-20-90 Partial Record on Appeal forwarded to the Court of Appeals.

5-12-90 295 Pltf and Appellant Linkous' REQUEST OF THE CLERK of this USDC to Transmit Record & to Supplement . . . to the 5th Circuit Court of Appeals.

5-12-90 296 Pltf MOTION TO SHOW AUTHORITY.

6-5-90 297 (JDA) ORDER . . . Long's motion for reimbursement of fees and expenses is DENIED. Pltf's motion to "show authority" is DENIED.

7-9-90 299 Certified Copy of ORDER by Court of Appeals DISMISSING Appeal for failure of appellant to file a brief.

4/20/90

APPENDIX AC

CASE NO. 89-2928

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DAN M. LINKOUS,
Plaintiff - Appellant,

v.

HONORABLE THOMAS J. STOVALL,
et al, Defendants - Appellees.

Appellant Linkous' Request for Extension of Time
To File Appellant's Brief

. . .

Respectfully submitted,

/s/ 4/20/90
Dan M. Linkous
Plaintiff and Appellant
pro se
1526 Kingwood Drive
Medical Clinic-Market Square
Kingwood, Texas 77339
713/358-6838

APPENDIX AD

UNITED STATES DISTRICT COURT
For the Southern District of Texas
Houston Division

DAN M. LINKOUS, Plaintiff	§	CLERK, U. S. DISTRICT COURT SOUTHERN DISTRICT OF TEXAS ENTERED
	§	MAY 16, 1990
VS.	§	JESSE E. CLARK, CLERK BY DEPUTY /s/
DONN C. FULLENWEIDER, ET AL. Defendants	§	Civil Action No. H-85-3676 (Fifth Circuit Court of Appeals, Case H-89-2928)

Plaintiff Dan M. Linkous' Motion To "Show Authority"

. . . DAN M. LINKOUS, Plaintiff and Appellant . . . entertaining documents and acting on such documents with submission of order in this case after Plaintiff's filing of "Notice of Appeal" on or about August 18, 1989 . . . granting jurisdiction to the Fifth Circuit Court of Appeals and abrogating jurisdiction of the U. S. District Court in any of these matters subsequent to the filing of "Notice of Appeal" . . .

WHEREFORE, Dan M. Linkous, Plaintiff in the above-captioned matter, requests this court to show its authority for acting in all matters subsequent to the filing of the "Notice of Appeal" by Plaintiff Linkous in regards to its jurisdiction, . . . items subsequent to the filing of the notice of appeal, . . . matters that have transpired subsequent to the filing of the notice of the notice of appeal . . . also requests that this court and the clerk's office transmit the complete, full, and accurate record to the Fifth Circuit Court of Appeals . . . show authority why it has not ordered the defendants and their counsel or some deponents to

file their motions with the Fifth Circuit Court of Appeals instead of this U. S. District Court on all matters subsequent to the notice of appeal filed . . .

Respectfully submitted,

/s/
Dan M. Linkous, M.D.

APPENDIX AE

UNITED STATES DISTRICT COURT
For the Southern District of Texas
Houston Division

DAN M. LINKOUS, Plaintiff	§	CLERK, U. S. DISTRICT COURT SOUTHERN DISTRICT OF TEXAS ENTERED MAY 25, 1990 JESSE E. CLARK, CLERK BY DEPUTY /s/
VS.	§	
DONN C. FULLENWEIDER, ET AL. Defendants	§	Civil Action No. H-85-3676

ORDER

Pending before the Court are Charles E. Long's motion for reimbursement of fees and expenses and for sanctions and Plaintiff Dan M. Linkous' motion for this Court to "show authority" for ruling on any motion after he filed his notice of appeal. . . .

. . . after reviewing the transcript of the deposition of Charles Long, the Court cannot conclude that this particular deposition was abusive or concerned entirely with irrelevant matters.

. . . Plaintiff's motion to "show authority," the Court simply notes that it has ruled on all pending post-judgment motions at the request of the Court of Appeals. Accordingly, it is hereby

ORDERED that Long's motion for reimbursement of fees and expenses and for sanctions is DENIED. It is further

ORDERED that Plaintiff's motion to "show authority" is DENIED.

SIGNED in Houston, Texas, this 24th day of May, 1990.

/s/
James DeAnda, Chief Justice
United States District Court

APPENDIX AF

UNITED STATES DISTRICT COURT
For the Southern District of Texas
Houston Division

		CLERK, U. S. DISTRICT COURT
DAN M. LINKOUS,	§	SOUTHERN DISTRICT OF TEXAS
Plaintiff	§	ENTERED
	§	MAR 25, 1990
VS.	§	JESSE E. CLARK, CLERK
	§	BY DEPUTY /s/
DONN C. FULLENWEIDER, ET AL.	§	
Defendants	§	Civil Action No. H-85-3676

ORDER

Pending before the Court are Plaintiff Dan M. Linkous' motion for reconsideration of the Court's final judgment. Defendants . . . motions for sanctions . . . Plaintiff's motion seeking a Court order requiring his counsel to return various legal records and work product, and Plaintiff's motion seeking the refund of $1,000.00 previously deposited in the Court's registry to . . . assure orderly discovery.

. . . to deter future violations of Rules 11 and 26 and 28 U.S.C. § 1927. The Court concludes that a sanction of $10,000.00 payable to each Defendant, Nancy Linkous, Thomas Henderson, and Donn Fullenweider . . . sufficient to serve the goals of Rules 11 and 26 and 28 U.S.C. § 1927. . . . in addition to the taxable costs of court . . .

ORDERED that Plaintiff's motion seeking a Court order requiring James Murphy to return various legal records and work product is DENIED. It is further

ORDERED that Plaintiff's request for the refund of $1,000.00 placed in the registry of the Court is DENIED. . . .

ORDERED that Defendants Nancy Linkous,' Thomas Henderson's, and Donn Fullenweider's motions for sanctions are GRANTED. . . .

ORDERED that Plaintiff's motion to reconsider the Court's final judgment is DENIED.

SIGNED in Houston, Texas, this 22nd day of March, 1990.

/s/

James DeAnda, Chief Justice
United States District Court